SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 394

ROBERTA WELLS, AS ADMINISTRATRIX OF THE ESTATE OF CHEEK WELLS,

Petitioner,

vs.

SIMONDS ABRASIVE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

HENRY S. DRINKER,
CHARLES J. BIDDLE,
FRANCIS HOPKINSON,
117 S. 17th Street,
Philadelphia 3, Pa.,
Attorneys for Petitioner.

INDEX

Subject Index

Citations

Cases:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952.

No. 394

ROBERTA WELLS, AS ADMINISTRATRIX OF THE ESTATE OF CHEEK WELLS,

Petitioner,

vs.

SIMONDS ABRASIVE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The opinion of the District Court for the Eastern District of Pennsylvania (R. 6) is reported at 102 F. Supp. 519 (1951). The per curiam opinion of the Court of Appeals for the Third Circuit (R. 14) and the further per curiam opinion of that Court (R. 25) on petition for rehearing are reported together at 195 F. (2) 814 (1952).

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on February 4, 1952. A petition for rehearing (R. 16) was duly filed, and was denied by per curiam opinion and order dated March 26, 1952. The petition for a writ of certiorari, together with a petition for leave to proceed in forma pauperis, were filed on June 21, 1952. Both petitions were granted on October 13, 1952 (R. 27). The jurisdiction of this Court rests upon 28 U. S. C. 1254(1).

Question Presented

An Alabama statute gives to the personal representative of one killed by negligent act in Alabama a direct right of action, with a two-year statute of limitations. A Pennsylvania statute gives a similar direct right of action to the personal representative of one killed by negligent act in Pennsylvania, also with a two-year limitation. In an action under the Alabama statute by the personal representative of one killed by negligent act in Alabama, brought in the United States District Court for the Eastern District of Pennsylvania, more than one year but less than two years after the death, the courts below held that the action by the Alabama personal representative was barred by the one-year statute of limitations of an earlier Pennsylvania Act which gives to the widow of one killed by negligent act in Pennsylvania a right of action in addition to that given to the personal representative. The question for determination by this Court is whether the application of the earlier Pennsylvania statute, as construed by the courts below, violates the Full Faith and Credit Clause of the United States Constitution.

Statutes Involved

Article IV, Section 1, of the Constitution of the United States;

Alabama Code of 1940, Title 7, Sections 123 and 150 (R. 10, 11); and the following Pennsylvania Acts:

1851, P. L. 699 (12 Purdon's Statutes, Sec. 1601) (R. 9);
1855, P. L. 309 (12 Purdon's Statutes, Sec. 1602) (R. 9);
1917, P. L. 447 (20 Purdon's Statutes, Sec. 771) (R. 10);
1937, P. L. 2755 (20 Purdon's Statutes, Sec. 772) (R. 10).

Statement of the Case

This action was by petitioner, a resident of Alabama, in her capacity as administratrix of the estate of her husband, to recover damages for the negligence of respondent in Alabama causing his death there, on April 19, 1948, by the bursting of a grinding wheel manufactured by respondent. Respondent having no office in Alabama, petitioner necessarily brought this suit (based on diverse citizenship) in the District Court at Philadelphia, respondent's principal place of business, on April 19, 1950, within two years but more than one year after decedent's death. The petitioner's suit, founded on the Alabama statute, was dismissed on the basis of an interpretation of the law of Pennsylvania, which violates the Full Faith and Credit Clause of the Constitution of the United States.

Title 7, Section 123, of the Alabama Code of 1940 (R. 10) provides that "a personal representative may maintain an action, and recover such damages as the jury may assess . . . for the wrongful act, omission or negligence of any person . . . whereby the death of his testator or intestate was caused, if the testator or intestate could have main-

tained an action for such wrongful act, omission, or negligence, if it had not caused death," the action to be brought within two years of his death.

Under this provision petitioner, as administratrix, had a valid cause of action under Alabama law from which she would not have been barred if she had been able to bring the present suit in Alabama on the date she brought it in Pennsylvania.

At the time of decedent's death there were two Pennsylvania statutory provisions for the recovery of damages for the death of one who died before bringing suit.

1. Section 35(b) of the Fiduciaries Act of 1917, as amended by Section 2 of the Act of July 2, 1937, P. L. 2755, 20 Purd. Stat. Sec. 1601-2 (R. 10).[1] provides (as does Section 123 of the Alabama Code), that "executors or administrators shall have power . . . to commence and prosecute . . . all personal actions which the decedent whom they represent might have commenced and prosecuted, except actions for slander and for libels, . . ." As held by the Supreme Court of Pennsylvania, the limitation period of this right of action by the personal representative is two years from decedent's death. *Stegner v. Fenton*, 351 Pa. 292, 40 Atl. (2) 473 (1945).

2. Act of April 26, 1855, P. L. 309, Section 1, 12 Purd. Stat. Sec. 1602 (R. 9) (amending that of April 15, 1851, P. L. 669, Section 19) providing that where no suit has been brought by the injured party during his life an action may be brought within one year from decedent's death by the "husband, widow, children or parents of the deceased and no other relatives."

The District Court, in an opinion (R. 6) affirmed per curiam by the Court of Appeals, and based on a Pennsyl-

[1] The original Section 35(b) of the Act of 1917 had been declared unconstitutional because of a defective title, *Strain v. Kern*, 277 Pa. 209, 120 Atl. 818 (1923), which defect was corrected and the Section reenacted in 1937.

vania decision rendered prior to the Act of 1937,[2] held that although the Alabama Act "differs widely from the Pennsylvania Act of 1855," the Act of 1855 was a declaration of the policy of Pennsylvania to limit actions for death to one year, which controlled this case. The District Court further said that "the only question here is whether the limitation of the Act of 1855 applies, or that of the Alabama Statute." The Court thus ignored the later Pennsylvania Act of 1937, having the two-year limitation in actions commenced by a personal representative after the death of the decedent, both as the Pennsylvania statute most nearly resembling the Alabama statute on which this suit was based, and as indicating Pennsylvania policy with regard to the limitation periods proper in such statutes. It also ignored petitioner's contention that since the law of Pennsylvania, by Section 35(b) of the Act of 1937 gave the administratrix of a decedent killed in Pennsylvania a remedy available on April 19, 1950, it could not deny her a similar remedy in Pennsylvania merely because her decedent was killed in Alabama, without violating the Full Faith and Credit Clause of the Constitution of the United States.

Specification of Errors to Be Urged

The Court of Appeals erred in holding that the statutory suit by the administratrix of a man negligently killed in Alabama was brought too late in Pennsylvania, despite the fact that it would have been in time if brought in Alabama, and would also have been in time if brought in Pennsylvania had the accident occurred in that State.

---

[2] *Rosenzweig* v. *Heller*, 302 Pa. 279, 153 Atl. 346 (1931). The question has not been passed on by the Supreme Court of Pennsylvania since passage of the Act of 1937.

Summary of Argument

The Alabama statute on which this suit is based contains a two-year limitation provision for suits by the administrator of one who has not brought suit before his death, which the Alabama court has held to be of the essence of the cause of action.

Under the Full Faith and Credit Clause this provision must be recognized by the Federal District Court in Pennsylvania, there being no public policy in Pennsylvania antagonistic or obnoxious to such recognition. The existence of the Pennsylvania Act of 1937, which gives a complete remedy for wrongful death in Pennsylvania and provides a two-year limitation, is conclusive of the absence of such antagonistic policy here, despite a one-year limitation provision in the earlier Act of 1855.

This case is ruled by the principles upon which were based both the majority, minority and concurring opinions in *Hughes* v. *Fetter*, 341 U. S. 609 (1951) and *First National Bank* v. *United Air Lines*, 342 U. S. 396 (1952). Those announced in the majority and concurring opinions are equally applicable here. The basis for the minority's dissent is not applicable here.

The fact that the two-year limitation provision in the Alabama statute is one of substantive right is particularly important since the 1948 Amendment by Congress to the Judicial Code, expressly including State statutes (Public Acts) with judgments (Judicial Proceedings) as entitled to "the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken."

ARGUMENT

In the petition for certiorari two questions were presented. The first was whether the courts below erred in

holding that (irrespective of the Full Faith and Credit Clause) the petitioner, whose suit as personal representative of the decedent would have been in time had she been able to obtain service on the respondent in Alabama and whose suit as personal representative would also have been in time had the accident occurred in Pennsylvania, was nevertheless barred by the shorter limitation of the earlier Pennsylvania statute of 1855 applying to suits by a husband, widow, children or parents. The second question was whether such interpretation of the Pennsylvania law by the courts below resulted in a violation of the Full Faith and Credit Clause of the United States Constitution.

This Court, in its order granting certiorari, specifically limited its agreement to review the case to the second question. It necessarily follows, therefore, that whether the courts below were right or wrong in their construction of the Pennsylvania law, is not here directly at issue. The question now before this Court is whether, assuming as correct the construction of the Pennsylvania law by the courts below, the dismissal of petitioner's suit involved a violation of the Full Faith and Credit Clause. If so, then the case must be reversed. We shall, therefore, proceed to discuss the Full Faith and Credit Clause question upon the assumption that the courts below were correct in their construction of the Pennsylvania law.

The Decision of the Court Below Denied Full Faith and Credit to the Alabama Statute

This suit was based on the Alabama statute giving a right of action by the personal representative of one killed by wrongful act in Alabama, and providing a limitation period of two years. The decision of the court below was that in a diversity case in Pennsylvania, the Federal Court was bound to apply the *lex fori* which they held was found

in the Pennsylvania Act of 1855, providing a one-year limitation for actions for wrongful death by a husband, widow, children or parents of the deceased, despite the Pennsylvania Act of 1937 which provides a complete remedy[3] for death through negligence by giving a right of action to the personal representatives of the deceased and allowing a limitation of two years, the same as that in the Alabama statute.

The position of petitioner is that the only possible justification for a refusal to apply the Alabama statute, with its two-year limitation, would have been the existence in Pennsylvania of a policy "concerning its peculiarly domestic affairs", contrary and obnoxious to that of Alabama; and that the Pennsylvania Act of 1937, with its two-year limitation applicable to suits for wrongful death occurring in Pennsylvania is conclusive against the existence of such contrary policy.

Article IV, Section 1, of the Constitution provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Pursuant to such authorization, by Act of Congress of May 26, 1790[4] Congress prescribed the manner in which "acts of the Legislature of any state" should be authenticated and the manner in which the "records and judicial proceedings" of its courts should be proved. However, in providing for the effect to be given to the State proceedings the Act of 1790 covered only "records and judicial

---

[3] To the effect that the Act of 1937 allows a complete remedy, see *Murray* v. *P. T. Co.*, 359 Pa. 69, 58 Atl. (2) 323 (1948).

[4] 1 Stat. 122, as amended, 28 U. S. C., Section 1738.

proceedings" and did not specify the effect to be given to "acts of the Legislature" of the States, the final sentence of the Congressional provision being as follows:

> "And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

In several cases this Court had "suggested that under the Full Faith and Credit Clause a forum State might make a distinction between statutes and judgments of sister States because of Congress' failure to prescribe the extra-state effect to be accorded public acts."[5] Subsequent to these decisions the Judicial Code was revised so as to make this final sentence provide:

> "*Such Acts* [of the legislature of any state], records and judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such state . . . from which they are taken."[6] (Emphasis supplied.)

Whether the effect of this amendment has been to give to State statutes the same imperative obligation as this Court had held must be given judgments,[7] or if not, what is its effect, this Court has not yet determined.

It has been held for many years that judgments must be enforced by a sister State even though the suit on which

---

[5] *Hughes* v. *Fetter*, 341 U. S. 609, 613 (1951), citing as examples of such decisions *Pacific Ins. Co.* v. *Commission*, 306 U. S. 493, 502 (1932) and *Alaska Packers Ass'n* v. *Commission*, 294 U. S. 532, 547 (1935). See also *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 437 (1943).

[6] *Act of June 25, 1948*, 62 Stat. 947.

State statutes had been held by this Court to be "Public Acts" within the Constitutional provision. *Hughes* v. *Fetter*, 341 U. S. 609, 611 (1951) and cases cited in note (5) therein.

[7] See *Hughes* v. *Fetter*, 341 U. S. 609, Note (4).

the judgment was obtained could not have been maintained under the laws and policy of the forum to which the judgment was brought for enforcement. *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 276 (1935); *Fauntleroy* v. *Lum*, 210 U. S. 230 (1908); *Kenney* v. *Supreme Lodge*, 252 U. S. 411 (1920). And this is so even though a suit upon the original cause of action was barred by the statute of limitations of the forum before the judgment was procured. *Christmas* v. *Russell*, 5 Wall. 290 (1866); *Roche* v. *McDonald*, 275 U. S. 449 (1928). It would certainly seem, however, that by the amendment Congress intended to further restrict the already narrow room left for the "play of conflicting policies"[8] among the States.

The purpose of the Full Faith and Credit Clause, as stated by Justice Stone in *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268, 277 (1935), "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."[9]

Read literally, these provisions would, of course, require the United States District Court in Philadelphia to give to the two-year limitation in the Alabama statute on which this suit was based "the same full faith and credit" as it

---

[8] See Brandeis, J. in *Broderick* v. *Rosner*, 294 U. S. 629, 642 (1935).

[9] "The full faith and credit clause . . . is but another limitation voluntarily imposed, by the people of the United States, upon the sovereignty of their respective states in applying the law of the forum." Mr. Justice Burton in *Order of United Commercial Travelers of America* v. *Wolfe*, 331 U. S. 586, 607 (1947).

"For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle of international law by which local policy is permitted to dominate rules of comity." Brandeis, J. in *Broderick* v. *Rosner*, 294 U. S. 629, 643 (1935).

would have been given by the Alabama courts had it been possible for petitioner to have brought the present suit there.

As Chief Justice Stone said in the opinion in *Pink* v. *A.A.A. Highway Express, Inc.*, 314 U. S. 201, 210 (1941):

> ". . . But the very nature of the federal union of states, to each of which is reserved the sovereign right to make its own laws, precludes resort to the Constitution as the means for compelling one state wholly to subordinate its own laws and policy concerning its peculiarly domestic affairs to the laws and policy of others. When such conflict of interest arises, it is for this Court to resolve it by determining how far the full faith and credit clause demands the qualification or denial of rights asserted under the laws of one state, that of the forum, by the public acts and judicial proceedings of another. See *Alaska Packers Assn.* v. *Commission*, 294 U. S. 532, 547; *Pacific Ins. Co.* v. *Commission*, 306 U. S. 493."

In *Pacific Ins. Co.* v. *Commission* Justice Stone said (p. 502):

> "This court must determine for itself how far the full faith and credit clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state."

Accordingly, where the interests of the forum have been such as to justify a limited application of the Full Faith and Credit Clause, and there has been a clear expression by the courts or legislature of the forum State of a public policy "obnoxious" to application of the foreign law, this Court has permitted the forum State to disregard the foreign law.[10] However, in those instances where a local

---

[10] See, e. g., *Pink* v. *A.A.A. Highway Express*, 314 U. S. 201 (1941); *Griffin* v. *McCoach*, 313 U. S. 498, 507 (1941); *Pacific Employers Ins. Co.* v. *Industrial Acc. Com.*, 306 U. S. 493 (1939); *Hughes* v. *Fetter*, 341 U. S. 609, Note (7).

policy has been permitted to prevail against the contention that the Full Faith and Credit Clause demanded application of the law of the place where the cause of action arose, there has always been present an element of peculiarly local concern. Where the forum has had little more concern with the transaction involved than simply being the forum, this Court has consistently required the forum to enforce rights given under the law of a sister State. In those cases the Court has held, regardless of how clearly the alleged policy of the forum was expressed, that the subject was not one with respect to which the forum could properly have a policy, such as enforcement of obligations voluntarily assumed under the laws of the other State as in *Converse* v. *Hamilton*, 224 U. S. 243 (1912) and *Broderick* v. *Rosner*, 294 U. S. 629 (1935), or the collection of a sister State's taxes, as in *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268 (1935). On the other hand, in those cases where there was an expression of the forum's public policy against enforcement of a foreign cause of action but it appeared from the treatment accorded similar domestic transactions or other foreign transactions that the forum had no real antagonism to the cause of action created by the law of the sister State, this Court has held that the alleged local policy must give way and the law of the sister State must be applied without consideration of whether the forum could properly have any policy with respect to the transaction under other circumstances. *Hughes* v. *Fetter*, 341 U. S. 609 (1951).

It is not necessary to decide in this case whether and to what extent Pennsylvania could properly have a legitimate public policy against enforcement of the two-year cause of action of Alabama under other circumstances. The fact is that the alleged public policy of Pennsylvania, as construed by the District Court, does not have as its basis any antago-

nism against granting remedies for wrongful death after one year. How can it possibly be so held in view of the Pennsylvania Act of 1937, which, as construed by the Pennsylvania Supreme Court,[11] allows a two-year limitation for actions in Pennsylvania on suits by a personal representative for the wrongful death of his decedent? It was and is our contention that Judge Kirkpatrick was wrong in his conclusion that the Pennsylvania Act of 1855 (providing a one-year limitation for actions by the husband, widow, parents or children) was applicable to this case. Be that as it may, the existence of the Act of 1855 does not indicate, much less demonstrate that a two-year limitation to an Alabama administrator is obnoxious to Pennsylvania policy. Nor would it make any difference if, instead of the Act of 1855 there were four statutes, one providing for an 18-month limitation for a suit by the children, another a 15-month period for a wife, a third with 12 months for the husband, and a fourth with 9 months for the parents. The existence of the 1937 act is conclusive that Pennsylvania "has no real feeling of antagonism"[12] against two-year limitation periods in actions for wrongful death.

This Case Is Controlled by the Principles of Both the Majority and the Minority Opinions in Hughes v. Fetter and First National Bank v. United Air Lines.

In *Hughes* v. *Fetter*, 341 U. S. 609 (1951) the Supreme Court of Wisconsin had sustained a Wisconsin statute permitting suits for wrongful death occurring within that State, but denying all remedy in the Wisconsin courts for death in an accident occurring outside of Wisconsin. This

---

[11] *Stegner* v. *Fenton*, 351 Pa. 292, 40 Atl. (2) 473 (1945).

[12] See *Hughes* v. *Fetter*, 341 U. S. 609, 612 (1951).

Court held that this statute violated the Full Faith and Credit Clause of the Constitution. The majority said (610):

> "It [the Supreme Court of Wisconsin] held that a Wisconsin statute, which creates a right of action only for deaths caused in that state, establishes a local public policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states."

The Court held that the finding by the Wisconsin Court as to the "local public policy" did not preclude this Court from considering whether there was any such basic policy, or whether the local policy was more important than that of enforcing the law of the place where the accident occurred. It then said (612):

> "We hold that Wisconsin's policy must give way. That state has no real feeling of antagonism against wrongful death suits in general. To the contrary, a forum is regularly provided for cases of this nature, the exclusionary rule extending only so far as to bar actions for death not caused locally." [13]

The Court also considered it "relevant, although not crucial here, that Wisconsin may well be the only jurisdiction in which service could be had as an original matter . . ." (p. 613).

In determining whether there is a "local public policy" so important as to control, when balanced against that of the foreign State and the general policy inherent in the Full Faith and Credit Clause, the Court will, we submit, consider whether the statute of the forum applies generally to all similar cases or whether it effects a discrimination against

---

[13] Compare *Order of United Commercial Travelers* v. *Wolfe*, 331 U. S. 586, 612 (1947) where the court said:

> "Throughout this period, the South Dakota statutes, moreover, have expressed no hostility toward domestic or foreign fraternal benefit societies."

some litigants. In this connection, in *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329, 339 (1896), Justice Gray, after stating that as a general rule the limitation of actions is governed by the *lex fori*, said:

> "Neither the statutes nor the decisions of the State of Iowa [where the suit was brought] upon this subject have made any discrimination against the citizens, the contracts or the judgments of other States, or against any right asserted under the Constitution or laws of the United States. The case is thus distinguished from *Christmas v. Russell*, 5 Wall. 290, cited at the bar." [14]

The basis of the dissenting opinion in *Hughes* v. *Fetter* was that a sufficiently adverse policy in Wisconsin was indicated by the fact that, in cases of death elsewhere, witnesses might not be readily available, and by the fact that the Wisconsin courts might not be equally acquainted with the detailed local statute and the cases construing it. These considerations cannot apply to the case at Bar, since they would be equally applicable to suits on an Alabama cause of action within one year, which even the court below agreed would be permitted here.

In *First National Bank of Chicago* v. *United Air Lines*, 342 U. S. 396 (1952) it was held that the District Court in Illinois erred in dismissing the suit, under the Utah wrongful death statute, by an Illinois executor of an Illinois decedent, the Illinois statute forbidding a suit in Illinois for a death outside Illinois in cases where there was a right of

---

[14] Compare *Woods* v. *Interstate Realty Co.*, 337 U. S. 535, 538 (1949). In *Rosenzweig* v. *Heller*, 302 Pa. 279, 285, 153 Atl. 346 (1931) the Pennsylvania decision principally relied on by Judge Kirkpatrick as establishing the one-year limitation policy prior to 1937, the court said:

> "Statutes of limitation should operate equally upon litigants seeking relief in our courts, upon those invoking remedies here for causes of action originating elsewhere, the same as upon those whose rights arise directly in our commonwealth."

action therefor under the laws of the place where the death occurred and service might be had there. This Court held that the fact that the Illinois statute permitted suits for out-of-state deaths if service could not be had where the death occurred did not validate the exclusion or indicate an adverse Illinois policy sufficient to justify a denial of full faith to the Utah statute. Apparently Justices Frankfurter and Burton, dissenting, were of a contrary opinion as to this, but such consideration is of course inapplicable in the case at Bar.

Justices Jackson and Minton, in a concurring opinion, noted that this was a diversity case, in which the "petitioner enters the federal court not by the grace of the laws of Illinois but by the grace of the laws of the United States." (p. 400.) They held that, irrespective of "whether or not Illinois may validly close her own courts to litigation of this kind, Illinois most assuredly cannot prescribe the subject matter jurisdiction of federal courts even when they sit in that State. Congress already has done this. 28 U. S. C. section 1332 (a)(1), and state law is powerless to enlarge, vary or limit this requirement." They further stated that while they believed, as stated in their dissenting opinion in *Hughes* v. *Fetter*, that Illinois was free to refuse that case a forum, yet "if it undertook to adjudicate the rights of the parties, the Constitution would require it to apply the law of Utah [Alabama], because all elements of the wrong alleged here occurred in Utah [Alabama]. For the essence of the Full Faith and Credit Clause is that certain transactions, wherever in the United States they may be litigated, shall have the same legal consequences as they would have in the place where they occurred." (p. 400).

Similarly, in the case at Bar, while, in accordance with the opinion of these two Justices Pennsylvania might conceivably have been free to refuse the present case a forum,

yet when it undertook to adjudicate the rights of the parties, the Full Faith and Credit Clause required that the Alabama statute, including the two-year limitation period, be given the same effect as it would have been given had petitioner been able to bring the suit in Alabama.

Accordingly, under all the majority, concurring and dissenting opinions in both cases, the Alabama statute was controlling.

The Two-Year Limitation Provision in the Alabama Statute Was of the Essence of the Cause of Action and Was One of Substantive Right.

Pennsylvania could not escape her obligation to give full faith and credit to Alabama law by declaring this to be a statute of limitations problem involving a matter of remedy as to which the rules of the forum apply. Nor, could the court below justify its decision by holding, correctly or incorrectly, that Pennsylvania had done so. In *Order of Commercial Travelers* v. *Wolfe*, 331 U. S. 586 (1947) this Court settled, at the very least, that where there is a conflict with respect to statutes of limitation it will, as in other conflicts of policy, evaluate the respective policies involved rather than apply an automatic rule to all cases. Moreover, even where a particular case has turned on the question of whether the matter involved was one of procedure or substance, this Court has been the final arbiter, not the forum State,[15] and it has long been the view of the Court that limitations provisions such as those contained in the Alabama wrongful death statute are matters of substance rather than remedy.[16]

---

[15] *John Hancock Ins. Co.* v. *Yates*, 299 U. S. 178 (1936).

[16] *The Harrisburg*, 119 U. S. 199 (1886); *Central Vermont Ry. Co.* v. *White*, 238 U. S. 507, 511 (1915); *Western Fuel Co.* v. *Garcia*, 257 U. S. 233 (1921).

The limitation provision of the Alabama statute was not in a general statute of limitations, but was contained in the wrongful death statute itself. Of it the Supreme Court of Alabama said in *Parker* v. *Fies & Sons*, 243 Ala. 348, 10 So. (2) 13 (1942), the very case relied on by Judge Kirkpatrick below:

> "The Statute requires suit brought within two years after death. This is not a statute of limitation, but of the essence of the cause of action, to be disclosed by averment and proof."

The lower Federal courts have been in disagreement on the question of whether a time provision which is part of the substantive cause of action must be enforced in the forum even where the statute of limitations of the forum is shorter.[17] This Court, however, has held that the substantive time provision operates both to prevent the action where the statute of limitations of the forum is longer and to permit it where the statute of limitations of the forum is shorter. *Engel* v. *Davenport*, 271 U. S. 33 (1926) was an action which had been brought in the California courts under the Merchant Marine Act, as supplemented by the Federal Employers' Liability Act, after one year but before two years had elapsed. The Supreme Court of California held that the one-year statute of limitations of California for personal injuries applied and prevented the action. This Court reversed on the ground that the two-year statute of limitations contained in the Employers'

---

[17] See, e.g., *O'Neal* v. *National Cylinder Gas Co.*, 103 F. Supp. 720 (N. D. Ill., E.D. 1952); *Anderson* v. *Linton*, 178 F. (2) 304 (Ct. of App., 7th Cir. 1949); *Zellmer* v. *Acme Brewing Co.*, 184 F. (2) 940 (Ct. of App., 9th Cir. 1950); *Lewis* v. *R.F.C.*, 177 F. (2) 654 (Ct. of App. D.C. 1949); *McMillen* v. *Douglas Aircraft Co.*, 90 F. Supp. 679 (S.D. Calif., C.D. 1950); *Maki* v. *Geo. R. Cooke Co.*, 124 F. (2) 663 (C.C.A. 6th Cir. 1942), cert. den. 316 U.S. 686 (1942); *Wilson* v. *Massengill*, 124 F. (2) 666 (C.C.A. 6th Cir. 1942), cert. den. 316 U.S. 686 (1942); these two Sixth Circuit Court decisions are clearly directly in conflict with that of the court below in the case at Bar.

Liability Act applied, since it was part of the substantive right. The Co[illegible] said at page 38:

> ". . . This provision is one of substantive right, setting a limit to the existence of the obligation which the Act creates . . . *And it necessarily implies that the action may be maintained, as a substantive right, if commenced within the two years.*" (Emphasis supplied)

While it is true that the above case involved a right of action given by a Federal statute, the same principle applies under the Full Faith and Credit Clause to a provision of substantive right given by a State statute, particularly in view of the recent amendment by Congress to the Judicial Code specifically including State statutes as entitled to full faith and credit in identical terms with those applied to judgments.

In this Alabama statute the limitation provision is prescribed in the very statute which created the cause of action. It does not operate merely to bar the remedy but constitutes an essential element in the cause of action, a part of the substantive right given by the statute. As such, it is to be enforced in Pennsylvania. There cannot be said to be a "local public policy" in Pennsylvania against a two-year limitation in wrongful death statutes, since Pennsylvania itself allows two years in its Act of 1937.

The decision of the Court of Appeals should therefore be reversed.

Respectfully submitted,

HENRY S. DRINKER,
CHARLES J. BIDDLE,
FRANCIS HOPKINSON,
Attorneys for Petitioner.